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U.S. DISTRICT COURT

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DISTRICT OF UTAH

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Attorney for Plaintiff

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

HECTOR VALENCIA,

Plaintiff,

v.

UNITED STATES CITIZENSHIP AND
IMMIGRATION SERVICES,

Defendant.

COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF

Case: 1:12cv00102

Assigned To : Kinball, Dale A.

Assign. Date : 4/25/2012

Description: Valencia v. United States
Citizenship and Immigration Services

Plaintiff, Hector Valencia, ("Plaintiff" or "Mr. Valencia") by and through his above-named counsel of record, brings this action against the above-named Defendant and alleges as follows:

I. INTRODUCTION

This is an action pursuant to the Freedom of Information Act, 5 U.S.C. § 552, (“FOIA”) for injunctive and other appropriate relief seeking disclosure and release of agency records improperly withheld from Plaintiff by Defendant.

II. PARTIES

1. Plaintiff is a citizen of Venezuela who lives in Layton, Utah. On October 13, 2011, Plaintiff was admitted to the United States of America with a B-1 Tourist Visa. Plaintiff has requested his immigration file, in its entirety, for purposes of preparing for his removal hearing which is set for June 11, 2012 – 47 days from today.

2. Defendant United States Citizenship and Immigration Services (“USCIS”) is an agency within the Department of Homeland Security (“DHS”) which has the custody and control of alien immigration files. USCIS is an agency within the meaning of 5 U.S.C. §552(f).

III. JURISDICTION

3. This Court has jurisdiction over this action pursuant to 5 U.S.C. §552(a)(4)(B) (Freedom of Information Act), 5 U.S.C. §551 et seq., 5 U.S.C. §555(b), §702, §704 and §706

(Administrative Procedure Act), and 28 U.S.C. §1331 (federal question) as this action arises under the Freedom of Information Act. 5 U.S.C. §552 *et seq.*

4. The aid of the Court is invoked under 28 USC §§ 2201 and 2202, authorizing a declaratory judgment.

IV. VENUE

5. Venue is proper in the Central District of Utah since Plaintiff resides in Layton, Utah. 5 U.S.C. 552(a)(4)(B).

V. REMEDY SOUGHT

6. Plaintiff seeks to have the Court compel Defendants to provide him with a copy of his alien immigration file forthwith.

VI. LEGAL FRAMEWORK

7. FOIA was passed with the intent to allow individuals access to documents under agency control. When a request for information is made to an agency, that agency has 20 working days to respond to the request. 5 U.S.C. 552(a)(6)(A)(I). The agency may grant itself a 10-work-

day extension where “unusual circumstances” exist, and written notice is provided to the requestor. 5 U.S.C. 552(a)(6)(A)(I). Where an agency has failed to respond within the prescribed period, the person making the request is deemed to have exhausted his administrative remedies. 5 U.S.C. 552(a)(6)(C)(i). On complaint, the U.S. district court may “enjoin the agency from withholding agency records and...order the production of any agency records improperly withheld from complainant.” 5 U.S.C. 552(a)(4)(B). Such a court order is especially appropriate when Plaintiff establishes an “exceptional need or urgency,” such as the need to prepare a defense in immigration proceedings. *See e.g., Open America v. Watergate Special Prosecution Force*, 547 F.2d 605, 615-616 (D.C. Cir. 1976) (holding that a requestor should be given priority where an “exceptional need or urgency” for the records can be shown); *Florida Rural Legal Services v. U.S. Dept. of Justice*, No. 87-1264 (S.D. Fla. Feb. 10, 1988) (finding that applications for lawful immigration status constituted an “urgent need”; *Maycock v. INS*, 741 F. Supp. 1558 (N.D. Cal 1989), rev’d and remanded *sub nom. Maycock v. Nelson*, 983 F. 2d 1006 (9th Cir. 1991) (for additional fact finding) (holding that genuine urgency warrants priority over pending requests), and; *Ray v. Department of Justice*, 770 F. Supp. 1544 (S.D. Fla. 1990) (holding that requests for information needed in pending deportation hearings constitute urgent need, and should be given priority in processing.)

VII. STATEMENT OF FACTS

8. On March 26, 2012, Plaintiff filed a FOIA request via facsimile. *See* FOIA Request and Delivery Confirmation, attached as Exhibit “A.”

9. On or about March 29, 2012, Plaintiff appeared before the U.S. Immigration Court for a Master Calendar hearing.

10. At the Master Calendar hearing, the Immigration Judge assigned the date of June 11, 2012 for Plaintiff’s Individual Hearing on the merits. *See* Notice of Hearing, attached as Exhibit “B.”

11. The USCIS’s National Records Center did not record the receipt of the March 26, 2012 FOIA request until April 2, 2012. *See* FOIA Correspondence, attached as Exhibit “C.”

12. According to the agency, Plaintiff’s FOIA request is currently number 660 of 956 pending requests in the category of those requesters who are in immigration proceedings. *See* FOIA Request Status Check & Average Processing Time, attached as Exhibit “D.”

13. USCIS'S average processing times are well beyond the statutory time limit of 20 working days pursuant to 5 U.S.C. § 552(a)(6)(A)(i). *Id.*

14. Accordingly, the agency has engaged in a pattern and practice of violating FOIA. *See generally, Hajro v. USCIS*, 2011 WL 4854021 (N.D. Cal. Oct. 31, 2011), attached as Exhibit "E."

VIII. FIRST CAUSE OF ACTION – DECLARATORY JUDGMENT

15. Defendant exceeded the legal response time of twenty days pursuant to 5 U.S.C. §552(a)(6)(A)(i) and failed to give written notice if a ten day extension was needed in the "unusual circumstances" set forth in 5 U.S.C. §552(a)(6)(B) and Plaintiff requests a declaratory judgment.

IX. SECOND CAUSE OF ACTION – INJUNCTIVE RELIEF

16. Defendant's action in withholding the requested information was arbitrary and capricious under 5 U.S.C. §551 et seq., 5 U.S.C. § 555(b), §702, §704 and §706, the Administrative Procedure Act.

17. Defendant has willfully and unreasonably delayed and refused to provide Plaintiff with the information requested under FOIA in a timely manner, despite a showing of “exceptional need or urgency” of an imminent removal hearing.

18. Plaintiff requests that Defendant be required to expedite Plaintiff’s FOIA request and make the requested documentation available to plaintiff forthwith.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully asks the Court to:

1. Assume jurisdiction over this matter;
2. Issue an Order requiring the Defendants respond to Plaintiff’s request under 5 U.S.C. § 552 forthwith;
3. Grant reasonable attorney’s fees pursuant to 5 U.S.C. § 552(a)(4)(E), and;

4. Grant such other and further relief as may be just and proper.

RESPECTFULLY SUBMITTED this 25th day of April, 2011.

PERRETTA LAW OFFICE



J. SHAWN FOSTER
Attorney for Plaintiff

EXHIBIT LIST

- A. FOIA Request and Delivery Confirmation
- B. Notice of Hearing
- C. FOIA Correspondence
- D. FOIA Request Status Check & Average Processing Time
- E. *Hajro v. USCIS*, 2011 WL 4854021 (N.D. Cal. Oct. 31, 2011)